

PLACER COUNTY SUPERIOR COURT
THURSDAY, CIVIL LAW AND MOTION
DEPARTMENT 42
THE HONORABLE CHARLES D. WACHOB
TENTATIVE RULINGS FOR JUNE 4, 2020 AT 8:30 A.M.

These are the tentative rulings for the **THURSDAY, JUNE 4, 2020 at 8:30 A.M.**, civil law and motion calendar. The tentative ruling will be the court's final ruling unless notice of appearance and request for oral argument are given to all parties and the court by **4:00 p.m., WEDNESDAY, JUNE 3, 2020**. Notice of request for argument to the court must be made by calling (916) 408-6481. Requests for oral argument made by any other method will not be accepted. Prevailing parties are required to submit orders after hearing to the court within 10 court days of the scheduled hearing date and approval as to form by opposing counsel. Court reporters are not provided by the court. Parties may provide a court reporter at their own expense.

NOTE: ALL LAW AND MOTION MATTERS WILL PROCEED BY TELEPHONIC APPEARANCES. (PLACER COURT EMERGENCY LOCAL RULE 10.28.)

More information is available at the court's website: www.placer.courts.ca.gov.

Except as otherwise noted, these tentative rulings are issued by the **HONORABLE CHARLES D. WACHOB**. If oral argument is requested, it shall be heard via telephonic appearance.

1. M-CV-0072106 DISCOVER BANK v. KINCAID, KENT

The motion for entry of judgment is dropped from the calendar as no moving papers were filed with the court.

2. S-CV-0039936 TAHOE VISTA NOTE v. VERDOM REALTY MGMT

The motion to extend discovery timelines is continued to Thursday, June 11, 2020 at 8:30 a.m. in Department 42. The declaration of Gary Kaplan refers to several exhibits that are not attached to the declaration. The matter is continued so that defendant can resubmit the Kaplan declaration with all of the applicable exhibits. Defendant shall file its amended Kaplan declaration, to include all referenced exhibits, by June 5, 2020 at 12:00 p.m.

The motion compel further discovery responses is continued to Thursday, June 11, 2020 at 8:30 a.m. in Department 42 to be heard in conjunction with the motion to extend discovery timelines.

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3. S-CV-0041190 HENLEY, BARBARA v. UNION PACIFIC RAILROAD

Defendant Union Pacific Railroad's Motion to Compel Further Responses to Discovery and Sanctions

As an initial matter, the court notes defendant withdrew its request for sanctions in its notice of non-opposition filed on March 17, 2020.

Defendant's unopposed motion is granted.

Plaintiff Barbara Henley shall provide further responses and responsive documents, without further objections, to (1) request for admissions, set one, nos. 25-34, 45, 47, 49, 55, 57, 75-78; (2) form interrogatories, set two, nos. 17.1/RFA 2, 17.1/RFA 3, 17.1/RFA 4, 17.1/RFA 5, 17.1/RFA 25, 17.1/RFA 26, 17.1/RFA 27, 17.1/RFA 28, 17.1/RFA 29, 17.1/RFA 30, 17.1/RFA 31, 17.1/RFA 32, 17.1/RFA 33, 17.1/RFA 34, 17.1/RFA 47, 17.1/RFA 49, 17.1/RFA 55, 17.1/RFA 57, 17.1/RFA 75, 17.1/RFA 76, 17.1/RFA 77, 17.1/RFA 78; and (3) request for production of documents, set two, nos. 91-101, 111-113, 115, 121, 123, 142-144.

Plaintiff David Henley shall provide further responses and responsive documents, without further objections, to (1) request for admissions, set one, nos. 25-34, 45, 47, 49, 55, 57, 75-78; (2) form interrogatories, set two, nos. 17.1/RFA 2, 17.1/RFA 4, 17.1/RFA 5, 17.1/RFA 25, 17.1/RFA 26, 17.1/RFA 27, 17.1/RFA 28, 17.1/RFA 29, 17.1/RFA 30, 17.1/RFA 31, 17.1/RFA 32, 17.1/RFA 33, 17.1/RFA 34, 17.1/RFA 45, 17.1/RFA 47, 17.1/RFA 49, 17.1/RFA 55, 17.1/RFA 57, 17.1/RFA 75, 17.1/RFA 76, 17.1/RFA 77, 17.1/RFA 78; and (3) request for production of documents, set two, nos. 91-101, 111-113, 115, 121, 123, 142-144.

Plaintiff Olivia Henley shall provide further responses and responsive documents, without further objections, to (1) request for admissions, set one, nos. 25-34, 45, 47, 55, 57, 75-78; (2) form interrogatories, set two, nos. 17.1/RFA 2, 17.1/RFA 4, 17.1/RFA 5, 17.1/RFA 25, 17.1/RFA 26, 17.1/RFA 27, 17.1/RFA 28, 17.1/RFA 29, 17.1/RFA 30, 17.1/RFA 31, 17.1/RFA 32, 17.1/RFA 33, 17.1/RFA 34, 17.1/RFA 45, 17.1/RFA 47, 17.1/RFA 49, 17.1/RFA 55, 17.1/RFA 57, 17.1/RFA 75, 17.1/RFA 76, 17.1/RFA 77, 17.1/RFA 78; and (3) request for production of documents, set two, nos. 91-101, 111-113, 115, 121, 123, 141-144.

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Sanctions are not awarded in light of defendant's withdrawal of the request in the notice of non-opposition filed on March 17, 2020.

4. S-CV-0041976 POLUPAN, EKATERINA v. CEC ENTERTAINMENT

Defendant CEC Entertainment, Inc.'s Motion for Summary Judgment/Summary Adjudication

Preliminary Matters

As an initial matter, plaintiffs filed a request for dismissal that was entered on May 29, 2020. This dismissal applied to all individual claims of Ekaterina Polupan and Dmitry Mediucho. Plaintiffs also dismissed the fourth cause of action for negligent infliction of emotional distress and fifth cause of action for negligent hiring, training, and/or supervision. The scope of the current motion is limited in light of this dismissal and is denied as moot as to the fourth cause of action, fifth cause of action, and as to individual claims of plaintiffs Ekaterina Polupan and Dmitry Mediucho.

Evidentiary Rulings

Preliminarily, declarations in support of the motion are required to follow fundamental requirements. While declarations in civil law and motion practice are routine, such declarations are not automatically accepted as evidence when offered in connection with a motion. (*Bozzi v. Nordstrom, Inc.* (2010) 186 Cal.App.4th 755, 761.) An admissible declaration must satisfy the same criteria as oral testimony, such as sufficiently establishing the declarant has personal knowledge [Evidence Code section 702]; sufficiently establishing the qualifications of an expert witness [Evidence Code section 720]; and establishing sufficient foundation for an expert witness opinion [Evidence Code sections 801, 803]. Declarations in support of summary judgment motions add an additional element; the declarations of the moving party are strictly construed while the declarations of the opposing party are liberally construed. (*Bozzi v. Nordstrom, Inc.* (2010) 186 Cal.App.4th 755, 761.) The court states these basic principles only because, when applied here, defendant's motion is essentially left without any meaningful or sufficient evidentiary support.

Plaintiffs' objection no. 1 to the entirety of the Michael Gibbens declaration is sustained. The remainder of the objections to the Gibbens declaration are overruled as moot in light of the court sustaining objection no. 1.

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Plaintiffs' objections nos. 7, 8, 9, 10, 11, 12, 13, 14 to the Bill Agin declaration are sustained.

Plaintiffs' objection no. 15 to the Dominik Cisneros declaration is overruled. Objections no. 16 is sustained.

Defendant's objections nos. 2 is sustained. Defendant's objections nos. 1, 3, 4 are overruled.

Ruling on Motion

Defendant, in the current motion, seeks summary judgment against the claims brought in the second amended complaint. Defendant also purports to seek summary adjudication. However, the moving papers presented by defendant fail to consistently assert this request. Specifically, the separate statement does not comply with California Rules of Court, Rule 3.1350(b), which requires the moving party to specifically identify, verbatim, the causes of action, affirmative defenses, claims for damages, or issues of duty in the separate statement. This failure to comply with the Rules of Court is basis enough to deny defendant's request for summary adjudication. (*Truong v. Glasser* (2009) 181 Cal.App.4th 102, 118.)

Putting the procedural defect aside, defendant seeks summary judgment and summary adjudication against the first cause of action for violation of the American Disabilities Act; the second cause of action for violations of the Unruh Civil Rights Act; and the third cause of action for assault as alleged in the second amended complaint. The trial court engages in a specific analysis when reviewing a motion for summary adjudication. First, it must define the scope of the motion by looking to the *operative pleading*. It is the pleading, not defendant's framing, that serves as the "outer measure of materiality" for a motion for summary adjudication in addition to determining the scope of the motion. (*Government Employees Ins. Co. v. Superior Court* (2000) 79 Cal.App.4th 95, 98; *Laabs v. City of Victorville* (2008) 163 Cal.App.4th 1242, 1258.) The pleading identify the issues raised and the motion must address these issues. Second, the moving party must meet its initial burden. A defendant has the initial burden of showing that a cause of action has no merit or there is a complete defense to the cause of action. (Code of Civil Procedure section 437c(p)(2).) The trial court must view the supporting evidence, and the inferences reasonably drawn from such evidence, in the light most favorable to the opposing party. (*Aguilar v. Atlantic Richfield Company* (2001) 25 Cal.4th

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826, 843.) The final part of the analysis is reached if the moving party meets its initial burden. Only if the defendant meets its initial burden does the burden shift to the plaintiff to show that a triable issue of material fact exists as to the cause of action or a defense to the cause of action. (Code of Civil Procedure section 437c(p)(2).)

In the second amended complaint, plaintiffs allege defendant violated the American Disabilities Act and the Unruh Civil Rights Act when its employee discriminated against M.M. “by insisting, over and over, that he stamp M.M.’s left stump”, causing M.M. “humiliation, embarrassment, mental anguish, and bills for psychological treatment” due to defendant’s “failure to accommodate M.M.’s disability and intentionally [impose] a fixed, inflexible, and nonsensical policy upon a harmless young child.” (SAC ¶¶36, 37, 43, 44.) Plaintiffs further allege defendant assaulted M.M. when its employee threatened and insisted on stamping M.M.’s left stump multiple times despite M.M. not consenting to the contact, which resulted in harm. (Id. at ¶¶47-55.) These are the allegations that frame the motion.

To reiterate, plaintiffs first and second causes of action allege disability discrimination under the American with Disabilities Act [ADA] and the Unruh Civil Rights Act. “ ‘Congress enacted the ADA in 1990 to remedy widespread discrimination against disabled individuals. In studying the need for such legislation, Congress found that “historically, society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem.” [Citation.]’ ” (*Californians for Disability Rights v. Mervyn’s LLC* (2008) 165 Cal.App.4th 571, 583.) The ADA prohibits discrimination “on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation.” (42 U.S.C.A. Section 12182(a).) An ADA claim under Section 12182(a) requires plaintiff to establish a disability; defendant’s facility is a place of public accommodation; and plaintiff was denied full and equal treatment because of the disability. (*Molski v. M.J. Cable, Inc.* (2007) 481 F.3d 724, 730.) The Unruh Act also entitles disabled individuals to full and equal access to public accommodations. (*Californians for Disability Rights v. Mervyn’s LLC* (2008) 165 Cal.App.4th 571, 585.) Thus, a violation of the ADA constitutes a violation of the Unruh Act. (Civil Code section 51; *Ibid.*)

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Defendant does not challenge either that M.M. has a disability or that its restaurant is a place of public accommodation. Defendant's focus is whether M.M. was denied full and equal treatment due to her disability. The court has carefully considered the admissible evidence submitted by defendant; evidence that was significantly impacted due to defendant's failure to present adequate declarations. (See generally admissible portions of Agin declaration and Cisneros declaration.) In light of limited admissible evidence, defendant has not met its initial burden as to the first and second causes of action.

The third cause of action alleges a claim for assault, which requires that defendant acted with intent to cause harmful or offensive contact or threatened to touch plaintiff in a harmful or offensive manner; plaintiff reasonably believed plaintiff was about to be touched in a harmful or offensive manner or it reasonably appeared to plaintiff that defendant was about to carry out that threat; plaintiff did not consent to the defendant's conduct; plaintiff was harmed; and defendant's conduct was a substantial factor in causing plaintiff's harm. (*So v. Shin* (2013) 212 Cal.App.4th 652, 668-669.) The only element challenged by defendant is whether its employee's conduct was harmful or offensive to M.M. The court has carefully considered the admissible evidence and defendant, again, fails to meet its initial burden. Defendant does not sufficiently address the allegations within the SAC, where plaintiffs allege Mr. Cisneros pulled at M.M.'s left stump multiple times in order to stamp her left stump despite M.M.'s attempts to pull away. Mr. Cisneros' statement that he intended no discrimination or harm do not sufficiently address or negate whether the alleged actions of repeatedly pulling on M.M.'s left stump, when M.M. tried to pull away, was intentional offensive contact. Thus, defendant also fails to meet its initial burden as to the third cause of action.

In sum, the motion is denied in its entirety.

5. S-CV-0043170 PEOPLE EX REL. v. DAY, JAMES

Plaintiff's motion for order deeming admitted the truth of facts sought in request for admissions is denied as defendants provided substantially compliant responses to the request for admissions. (Code of Civil Procedure section 2033.280(c).) Sanctions in the amount of \$3,000.00 are imposed on defendants James Day, Barbara Day, and Mid Valley Consulting & General Engineering. (Code of Civil Procedure section 2033.280(c).)

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6. S-CV-0043652 IN RE PETITION OF OLIVAREZ, E.

The petition for approval of the transfer of structured settlement payments is denied. The petition does not sufficiently establish the transfer is in the best interest of the transferor, Erikka Olivarez. Mrs. Olivarez received an order from the court on October 2, 2019 in Placer Court Case No. SCV-43443, for the transfer of monthly payments totaling \$65,856.60 in exchange for a lump sum payment of \$22,500. A month later, she sought another transfer in Placer Court Case No. SCV-43714, which was denied on December 5, 2019. Mrs. Olivarez immediately sought another transfer that was denied on February 6, 2020. Mrs. Olivarez once again seeks to transfer another 12 months of payments, totaling \$26,342.64, for a lump sum payment of \$13,071.70. The allegations of Mrs. Olivarez's needs are similar to those alleged in her prior petitions. Moreover, the court is unable to make a determination that this additional transfer is in Mrs. Olivarez's best interest when these monthly payments appear to be the sole source of income for herself and her three small children. The court also cannot make a determination the transfer is in Mrs. Olivarez's best interest when it appears from the petition that she would strongly benefit from the consultation with a legal and/or financial professional prior to engaging in any further transfers. For these reasons, the petition is denied.

7. S-CV-0043684 TOWNSEND, ROBERT v. GARD, DAVID

The demurrer is continued to Thursday, June 11, 2020 at 8:30 a.m. in Department 42. The court apologizes to the parties for the inconvenience.

8. S-CV-0043900 VINCENT, DAVID v. COLDWELL SOLAR

Defendants' Demurrer to the Second and Sixth Causes of Action

Ruling on Requests for Judicial Notice

Defendants' request for judicial notice is granted under Evidence Code section 452.

Plaintiff's request for judicial notice is granted under Evidence Code section 452.

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Ruling on Demurrer

Defendants' current demurrer is limited to challenges to the second cause of action for hostile work environment and sixth cause of action for defamation. A demurrer tests the legal sufficiency of the pleadings, not the truth of the plaintiff's allegations or accuracy of the described conduct. (*Bader v. Anderson* (2009) 179 Cal.App.4th 775, 787.) The allegations in the pleadings are deemed to be true no matter how improbable the allegations may seem. (*Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604.) The court reviews the demurrer keeping this in mind.

Initially, the plaintiff does not oppose defendants' challenge to the second cause of action. In light of this, the demurrer to the second cause of action is sustained without leave to amend.

As to the sixth cause of action, a review of the entire complaint and a reading of the pleading as a whole demonstrates the defamation claim is sufficiently pleaded to withstand demurrer. Thus, the demurrer is overruled as to the sixth cause of action.

Defendants shall file and serve their answer or general denial by June 19, 2020.

9. S-CV-0043932 RINNOVO GROUP v. GOLDMAN SACHS BANK

Defendant's Demurrer to the Complaint

Ruling on Request for Judicial Notice

Defendant's request for judicial notice is denied as "taking judicial notice of a document is not the same as accepting the truth of its contents or accepting a particular interpretation of its meaning." (*Joslin v. H.A.S. Ins. Brokerage* (1986) 184 Cal.App.3d 369, 374.)

Ruling on Demurrer

The demurrer is overruled in its entirety. A demurrer tests the legal sufficiency of the pleadings, not the truth of the plaintiff's allegations or accuracy of the described conduct. (*Bader v. Anderson* (2009) 179 Cal.App.4th 775, 787.) The allegations in the pleadings are deemed to be true no matter how improbable the allegations may seem. (*Del E. Webb Corp. v. Structural Materials Co.* (1981)

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123 Cal.App.3d 593, 604.) The allegation in the complaint, when read as a whole, are sufficient to support the first, third, and fourth causes of action.

Defendant shall file and serve its answer or general denial by June 19, 2020.

10. S-CV-0044286 MAKI, STEVE v. COBO, LENAY

Harman Randhawa's Motion to be Relieved as Counsel

As an initial matter, a substitution of attorney was filed for plaintiff Steve Maki on May 15, 2020. In light of this filing, the motion is moot as to plaintiff Steve Maki.

Harman Randhawa's motion to be relieved as counsel for plaintiff Quasar LLC is granted. (Code of Civil Procedure section 284(2); California Rules of Court, Rule 3.1362.) Harman Randhawa shall be relieved as counsel of record effective upon the filing of the proof of service of the signed order upon Quasar LLC.

11. S-CV-0044290 CLARK'S CORNER INVESTMENT V. JLM FINANCIAL

Defendant Farid Dibachi's Motion to Vacate Sister-State Judgment

Ruling on Request for Judicial Notice

Plaintiff's request for judicial notice is granted under Evidence Code section 452.

Defendant's request for judicial notice submitted with the reply papers is denied as new evidence submitted with reply papers is not considered where the opposing party has not had an opportunity to respond. (*Alliant Ins. Services, Inc. v. Gaddy* (2009) 159 Cal.App.4th 1292, 1307-1308.)

Ruling on Motion

The motion is denied. It is the judgment debtor who bears the burden of showing, by a preponderance of the evidence, that a sister-state monetary judgment should be vacated. (*Tom Thumb Glove Co. v. Han* (1978) 78 Cal.App.3d 1, 5.) The evidence submitted to the court establishes an amended judgment was entered in favor of plaintiff in New York on August 27, 2019. Defendant has not made a sufficient showing to establish a defense against this

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amended judgment to support vacating the sister-state judgment entered on January 9, 2020. For the foregoing reasons, the motion is denied.

12. S-CV-0044356 McEVILLY, SUSAN V. HA, CHRISTOPHER

Defendants' demurrer to the second, third, and fourth causes of action is overruled. A demurrer tests the legal sufficiency of the pleadings, not the truth of the plaintiff's allegations or accuracy of the described conduct. (*Bader v. Anderson* (2009) 179 Cal.App.4th 775, 787.) The allegations in the pleadings are deemed to be true no matter how improbable the allegations may seem. (*Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604.) The allegations within the first amended complaint, when read as a whole, are sufficient to support the second, third, and fourth causes of action.

Defendants shall file and serve their answer or general denial by June 19, 2020.

13. S-CV-0044836 INVASIX v. WHEELER, ELIJAH

Alan D. Rose, Jr.'s Pro Hac Vice Application

The application is granted as prayed subject to Mr. Rose paying the requisite application fee to the State Bar of California under California Rules of Court, Rule 9.40(e).

Sammy S. Nabulsi's Pro Hac Vice Application

The application is granted as prayed subject to Mr. Nabulsi paying the requisite application fee to the State Bar of California under California Rules of Court, Rule 9.40(e).